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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

Implementation of the Cable
Television Consumer Protection and
Competition Act of 1992

Broadcast Signal Carriage Issues

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MM Docket No. 92-259

**REPLY COMMENTS OF
NEWHOUSE BROADCASTING CORPORATION**

Newhouse Broadcasting Corporation ("Newhouse") hereby submits reply comments in response to comments filed in the Notice of Proposed Rulemaking in the above-captioned proceeding ("Notice"). The Notice sought comment on specific proposals to implement the must-carry and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").

As stated in its initial comments, Newhouse, through its affiliated cable companies, NewChannels Corp., MetroVision, Inc. and Vision Cable Communications, Inc., owns and operates cable systems in 17 states serving approximately 1,350,000 subscribers. Thus, Newhouse's interest in the issues involved in this proceeding is manifest.

In these reply comments Newhouse wishes to focus on a single issue, namely, whether the terms of existing or future agreements

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between program suppliers and broadcast stations can supersede the retransmission consent rights newly given to broadcasters by Section 325(b) of the 1992 Cable Act. Newhouse took the position in its comments that the only way to implement retransmission consent in a manner that leaves both the compulsory license and existing or future programming contracts intact is to allow broadcasters complete freedom to negotiate retransmission consent with cable operators. Predictably, programming interests took the contrary view that the contract between program suppliers and broadcasters should and must govern the ability of broadcasters to negotiate for and agree to retransmission consent.¹

Newhouse wishes to reiterate its strongly-held view that the rights in the underlying programming are separate from the rights in the broadcast signal on which the programming is transmitted. Only in this way can the compulsory copyright license remain unmodified and existing and future programming contracts be unaffected as is required by Section 325(b)(6). A cable operator who obtains retransmission consent from a broadcast station must still pay royalty fees under the compulsory copyright license. The program owner whose property is carried on such a broadcast signal will receive the compensation it is due under the copyright royalty fee distribution process. The program contract is left unaffected since the program owners would still be paid

¹See Comments of Motion Picture Association of America and joint comments of National Hockey League and National Basketball Association.

the direct licensing fees which they receive from broadcasters for the purchase of their programming plus their share of the compulsory license fees paid by the cable operator who has received consent to retransmit the broadcaster's signal. If program owners are allowed to intrude upon this process by either ensuring that retransmission cannot be granted or that exorbitant sums will be requested for such consent, the entire balance which Congress was attempting to achieve will be knocked askew. Congress' intent in enacting Section 325(b) was clearly to give broadcasters control over their signal, not to provide program owners with another bonanza.

Attachment A lists the non-ADI, non superstation television broadcast stations carried by the Newhouse cable systems. As can be seen, every system carries at least one, most carry three or four, and some systems import as many as six non-ADI signals. Most of these signals have been carried for over ten years. If the Commission's rules prevent these stations from authorizing continued carriage, Newhouse fully expects massive subscriber discontent and outcry which would be directed at cable operators, broadcast stations and the FCC as well.²

Newhouse therefore urges the Commission to ensure to the best of its ability that established viewing patterns are disrupted as little as possible. The policy of retransmission

²Newhouse has taken the position that Canadian stations, which are included on Attachment A, are not subject to retransmission consent.

consent should be implemented as a negotiation between cable operators and broadcast stations unimpeded by the intrusion of a third force whose only interest is in receiving more compensation for its product.

Respectfully submitted,

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Date: January 19, 1993

NEWCHANNELS CORPORATION

Binghamton, NY - WNYW, WTVH*, WIXT*, WETM*, WENY*
 Montrose, PA - WICZ, WMGC, WBNG
 Corning, NY - WNYW, WKBW, WBNG, WICZ, CHCH**
 Rome, NY - WKTU, WFXV, WUTR, CKWS**
 Potsdam, NY - WNYW, WIXT, CJOH**, WPTZ, CBOT**
 Gouvernour, NY - WNYW, WSTM, CJOH**, CBOT**
 Massena, NY - WNYW, WCAX, CBOT**, WPTZ, CJOH**, WIXT
 Carthage, NY - WSTM, WNYW, CKWS**, CJOH**
 Indian River, NY - WSTM, CKWS**, CJOH**
 Harrisville, NY - WXIA, CKUS**
 Wellesley, NY - WXIA, CJOH**, CKWS**
 Malone, NY - CBMT**, CJOH**, WIXT, CFCF**
 Ogdensburg, NY - WNYW, WSTM, WIXT, CBOT**, CKWS**, CJOH**
 Coraopolis, NY - WKBN*, WYTV*, WTRF*, WTOV*
 Canonsburg, PA - WTOV*, WTRF*
 Eufaula, AL - WSFA (split ADI)
 Clio, AL - WSFA, WTVY, WDAU (split ADI)
 Anniston, AL - WSJB, WBRC, WGNV, WNAL, WVTM
 Champlain, NY - CBMT**, CFCF**
 Oneonta, NY - WNYW, WIXT, WRGB (split ADI)
 Sidney, NY - WNYW, WIXT (split ADI)
 Cooperstown, NY - WSTM, WRGB, WIXT, WBNG
 Delhi, NY - WTEM, WRBG, WMHT, WIXT
 Oxford, NY - WKTU, WTVH, WSTM, WIXT
 New Berlin, NY - WTVH, WSTM, WIXT (split ADI)

VISION CABLE COMMUNICATIONS, INC.

Albemarle, NC - WGNP, WFMV, WXII
 Burgaw, NC - WCTI, WITN, WTVB*
 DuBois, PA - WPTT, KDKA, WTAE, WPGH, WPXI, WQED
 Florence, SC - WIS
 Houma, LA - WBRZ, WAFB
 Jacksonville, NC - WECT, WWAY, WTVB*
 Pineville, LA - KNOE, WBRZ*
 Salisbury, NC - WGHP, WFMV, WGGT, WXII
 Shelby, NC - WBTU, WCNC, WJZY, WSOC, WCCB
 Sumter, SC - WBTU, WPDE
 Supply, NC - WBTU, WTVB*
 Wilmington, NC - WNCT*, WITN*, WTVB*

METROVISION, INC.

Lincoln, NE - KETV, KMTV, KPTM, WOWT

Waco, TX - WFFA, KXTX

Temple, TX - WFFA, KBVO

Killeen, TX - WFFA, KBVO

Prince George's County, MD - WMAR, WNUV, WBAL, WBFF, WJZ

- * - Cherry picked (part-time carriage)
- ** - Canadian station